

Data Coordinator's Conference

# Juvenile Justice Legislation

# Objective

To provide data coordinators with an overview of the legislative provisions affecting Title 3 of the Family Code and other related statutes.



### Juvenile Justice Legislative Workgroup

- Convened three meetings
   October November
   2012.
- The Workgroup's Charge
  - Identify viable substantive and cleanup proposals;
  - Procedurally complex, controversial or costly changes (fiscal notes) were not considered.

- Comprised of experienced juvenile justice stakeholders.
- Presented an "omnibus" draft of cleanup proposals for consideration.



### Different Paths

- The omnibus cleanup proposals were divided into parts:
  - Title 3 and Related
     Statutory Provisions &
     Records Provisions
     (Pts. I, II, III)
  - Legislation Affecting the Texas Juvenile Justice Department



### **AS FILED**

- HB 2862 by Rep. McClendon
- SB 1440 by Sen. West
- HB 2733 by Rep. White



### Cleanup Legislation

HB 2862 - Enrolled

HB 2862 also carried forward the substantive and technical amendments from SB 1440.

The enrolled version of HB 2862 included a wide range of cleanup provisions relating to:

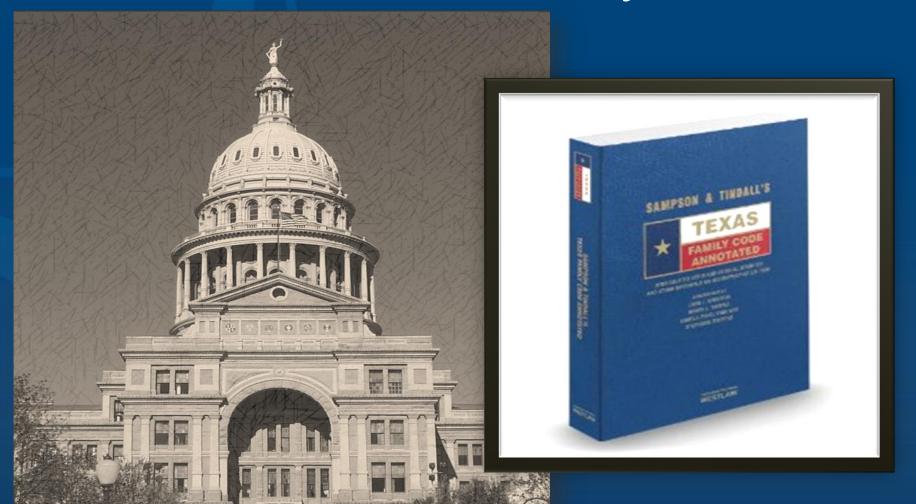
- juvenile court proceedings
- restricted access;
- determinate sentencing;
- restitution payments;
- admissibility;
- non-secure facilities\*; and
- updating and cleanup;

g; and

\*not an original workgroup proposal



# Title 3, Texas Family Code





# **Delinquent Conduct & CINS**



# Prostitution & Sexting

Conduct Indicating a Need for Supervision

#### Amends §51.03, FC

Renumbered provisions and clarified that prostitution and sexting are considered CINS conduct.

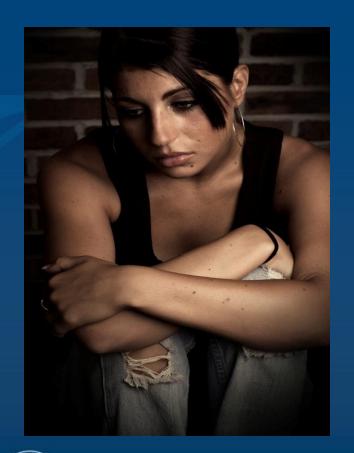
- Prostitution Section 51.07(b)(7)
- **Sexting** Section 51.03(b)(8)

#### **Ending the Confusion**

Sexting is considered CINS, NOT delinquent conduct, despite the possibility of a higher offense classification.

#### Renumbered Sealing Provisions

- Prostitution §58.003(c-3) and (c-4)
- Sexting §58.003(c-5) and (c-6)





## Taking into Custody

### **Human Trafficking**

### Amends §52.032, FC

- A child who is believed to be a victim of human trafficking and who has been taken into custody for delinquent conduct or CINS
  - MAY NOT be released by law enforcement under informal disposition or referred to a First Offender Program.
- Prohibits the juvenile board from adopting disposition guidelines that dispose of these cases without referral.
- Required even if there is not a designated trafficking court.



# Jurisdiction



# Court Designations

**Human Trafficking Jurisdiction** 

### Adds §51.04 (i), FC

Creates cross-cover courts jurisdiction for human trafficking cases and related programs;

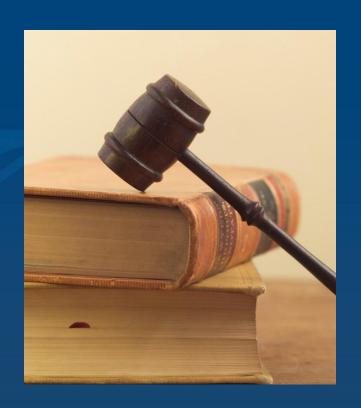
- Authorizes a juvenile board to designate a court with jurisdiction over DFPS proceedings to also serve as a juvenile court or alternative juvenile court.
- Referred for DC/CINS if there is "cause to believe" the child may be the victim of human trafficking.



# Transfer of Combination of Proceedings Jurisdiction

### Adds §51.0413, FC

- Relates to expanded court jurisdictional designations under §51.04, FC.
- Authorizes jurisdiction over juvenile delinquency and family abuse matters for a child believed to be a victim of human trafficking.





# Incomplete Proceedings

**Jurisdiction** 

#### Amends §51.0412, FC

- The juvenile court's jurisdiction over incomplete proceedings now includes <u>certification transfers</u> to adult court.
- The petition or motion must have been filed prior to age 18 or 19, as applicable.





# **Detention**

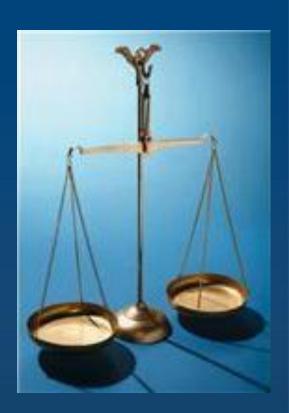


# **Detention Hearings**

**Appointment of Counsel** 

### Amends §54.01(b-1) & (d), FC

- Requires the juvenile court to appoint an attorney to represent a juvenile offender who has been taken into custody within a reasonable time before the first detention hearing.
- Unless not feasible due to exigent circumstances.
- Child and family must meet the qualifications for indigence.





# **Detention Hearings**

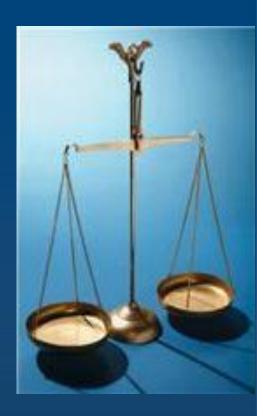
Continuation of Representation

#### Amends 51.101 (a), FC

Specifies that the attorney who is appointed prior to the initial detention or in the absence of parent at the detention hearing continues to represent the child until:

- the case is terminated
- the child's parents retain other counsel
- or the court appoints other counsel.

Release from detention does *not* terminate representation.





## 2011 Legislative Session

**Post-Certification Detention** 

### §152.0015, HRC (2011)

- Requires a juvenile board policy that specifies:
- Whether a person--
  - Younger than 17 years of age;
  - CERTIFIED as an ADULT; Section 54.02, FC
  - May be detained in a juvenile facility pending trial. Section 51.12,



Attorney General Opinion GA – 0927 (May 7, 2012)

RQ -1012-GA from Brazoria County

Inquiry: Whether a facility must comply with sight and sound separation of a certified youth under age 17.



### Post-Certification Detention

Sight & Sound Separation

### Amends Article 4.19, CCP

- Applies to a person under the age of 17 (i.e., a child) who has been transferred an adult facility;
- Detention conditions must meet the requirements Section 51.12 (f)\*, FC.

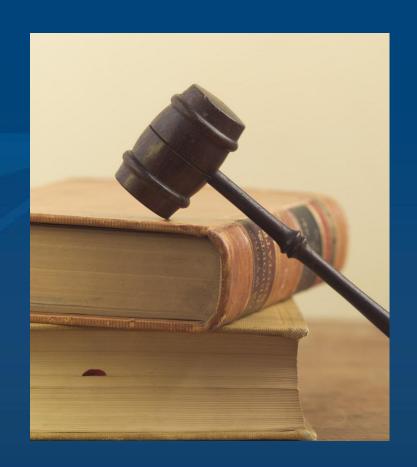




# Post-Certification Detention Setting Bail

### Amends 54.02(h-1), FC

- Clarifies that a juvenile court judge may set bail...
  - For a certified youth in a juvenile detention facility
  - In the same manner as for adults.





### Non-Secure Correctional Facilities

### **Detention Options**

### Amends §§ 51,02, 51.12, 54.05 and 54.05

- Deletes §51.02, FC definition and now cross-references §51.126, FC.
- Requires TJJD to create new standards -- TAC 355 Eff.
   6/3/2013
- Removes placement restrictions on NSC facility to only youth on probation.
- Youth may be detained in NSC facility until initial detention hearing.
- Permits a NSC placement if the court makes a "dispositional" finding" under §54.04 (d) (5), FC.

# Criteria for NSC Facility Placements

- Must be registered, certified and designated by the juvenile board
- Meets TJJD short-term detention standards;
- Secure detention facility is not available in the county in which child is taken into custody. §51.12(j-1), FC



### Detention

### **Uniform Interstate Compact**

#### Amends §54.011(e), FC

Removes the reference to the 5-day period required to arrange for the return of a child under the Uniform Interstate Compact for Juvenile (UICJ).

#### **UICJ** Administrative Rules

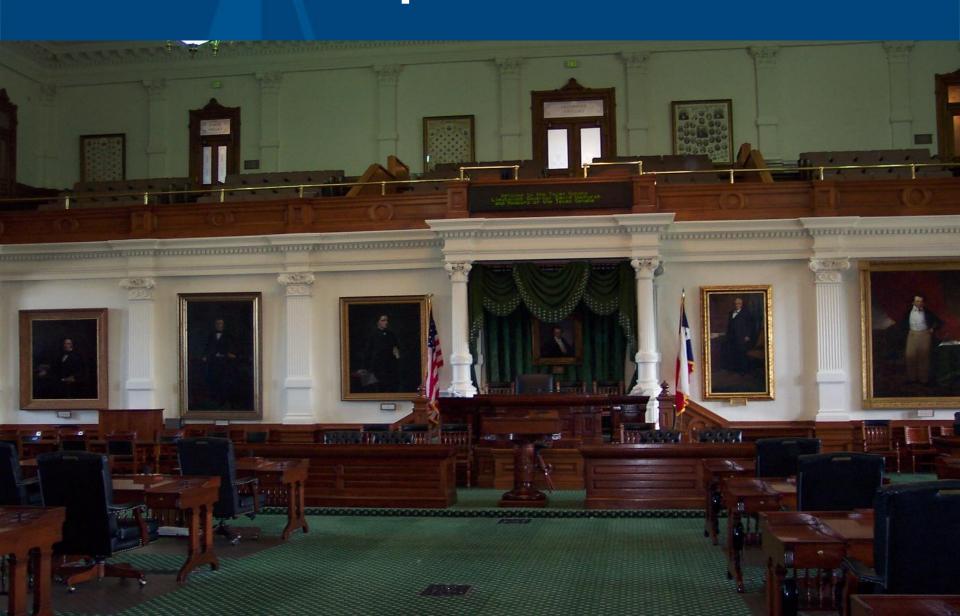
The UICJ rules control the length of time a child may be held in detention without a hearing while awaiting transport to the home state.



UICJ Rules specify a 5-day period, but may depend on other factors such as whether the return is voluntary or involuntary.



# **Case and Supervision Transfers**



# Transfers for Disposition

Residence of a Child

### Adds §51.07 (b), FC

 The residence of a child involved in juvenile and DFPS protective legal proceedings is in the county in which the court of continuing jurisdiction is located.

- Eliminates "gap" if a child is subsequently transferred to another county under the interim supervision statute.





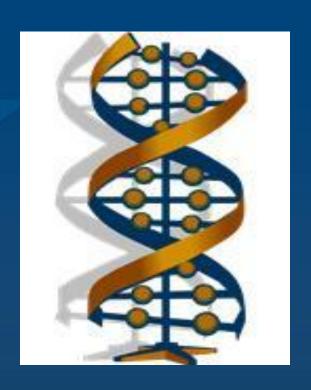
**Supporting Documentation** 

### Amends §51.072 (f)(19), FC

Requires SC to provide the RC with documentation that the DNA sample has been collected and transmitted.

#### Amends §51.072 (f -2)

RC may refuse interim supervision until the SC has documented its compliance with the DNA provision.





Directives to Resume

### Amends §51.072 (j-1) and (j-2)

- Permits the return of a child to the RC when the child has been sent to the SC via a directive to resume during the period of interim supervision.
- The term of interim supervision may not exceed the 180-day period;
- This change is intended to provide continuity of supervision.





Directives to Resume

Amends §51.072 (j-1) and (j-2)

ICT Officers may consider the child's circumstances, including:

- 1) Person with whom the child resides is in the RC;
- 2) Child has been ordered by the juvenile court to reside in the SC or another county;
- 3) Child's case meets the requirements for collaborative supervision.





**Parental Orders** 

### Amends §61.0031, FC

- Eliminates the parental notice and appearance requirement when permanent supervision has been finalized by an agreed order; and
- Maintains the enforceability of intercounty transfer of probation supervision court orders affecting a parent or other eligible person.





### **Mental Health Evaluations**



# Physical & Mental Examinations Court Ordered Evaluations

### Amends Section 51.20, FC

- Authorizes court ordered evaluations for <u>chemical dependency</u>, mental illness and retardation.
- Referrals may be ordered at the court's discretion or upon request of a parent or guardian.
- Probation may order the child to MHMR or <u>appropriate authorized</u> <u>agency or provider</u> for chemical dependency and report data to TJJD.





### Mental Health Screening

Admissibility of Statements

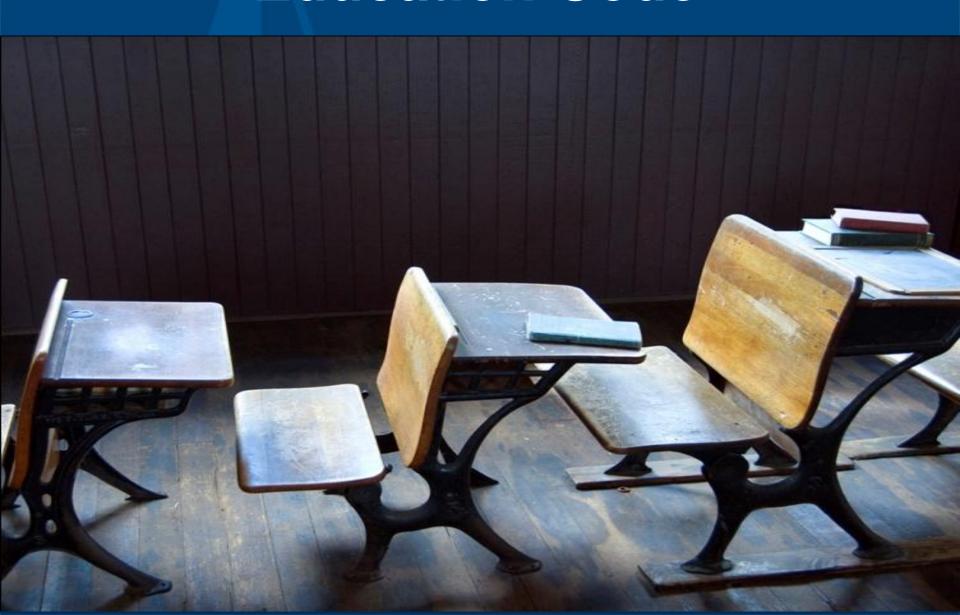
### Amends 221.003(b), HRC

- Mental health data and statements made by child during mental health screening and risks/needs assessment are not admissible at any <u>adjudication</u> hearing.
- Under prior law, not admissible at any other hearing





# **Education Code**



## Class C and School Offenses

#### **Key Considerations**

- Law enforcement and school ISD peace officers should consider the following when processing juvenile-age children for Class C and certain school offenses:
  - What is the child's AGE?
  - What is the nature and classification of the OFFENSE?
  - What is the role of the referring LEA ENTITY?
  - What information will SUPPORT PROCEEDINGS?
  - What evidence is necessary to OVERCOME THE PRESUMPTION of incapacity?





# Age of Criminal Responsibility

Class C Offenses

### Amends 8.07, PC

- Child under 10 cannot commit a Class C misdemeanor or violation of city ordinance;
- Child 10 but not 15 is presumed incapable of committing a Class C misdemeanor or violation of city ordinance;
- Presumption is rebuttable if believed the child has sufficient capacity to understand conduct was wrong





# Informal & First Offender Programs

ISD Peace Officer & Case Disposal

### Amends §37.081(c), EC and §§ 52.03, 52.031, FC

- An ISD peace officer is authorized to informally dispose of a case or refer it to a First Offender Program.
- The case may be disposed of without referral to juvenile court or to a court of competent jurisdiction based on guidelines adopted by the juvenile board.



### School Offenses

Citations & Warrants Prohibited

### Amends 37.143, EC

Citations are no longer permitted for school offenses --

- School offenses are defined as non-traffic Class C misdemeanors committed on school property;
- A child may still be taken into custody under §52.01,
   FC

### Amends 37.085, EC

Arrest warrant may not be issued for Education Code offenses committed before 17 years of age.





### **School Offenses**

**Disruption & Disorderly Conduct** 

Amends 37.124 and 27.125, EC 42.01(a)(1) – (5), PC

A child younger than 12 years of age (old law: 6<sup>th</sup> grade) cannot commit:

- Disruption of Classroom or Transportation
- Disorderly Conduct\*







### School Offenses

Truancy

### Amends 25.0915(c), EC

- The court shall DISMISS a truancy complaint or referral if:
- The school files a charge without:
  - specifying whether the child receives or is eligible for special education service; or
  - a statement certifying that truancy prevention measures have been applied and failed to address attendance





# Lack of Capacity

**Fine Only Misdemeanors** 

# Amends 8.08, CCP and 51.08, FC Court may dismiss charge if:

- Probable cause to believe child lacks capacity --
  - to understand proceedings
  - assist in defense; or
  - unfit to proceed
- Subsequent referrals must be transferred from justice to juvenile court under 51.08, FC.





# **Available Options**

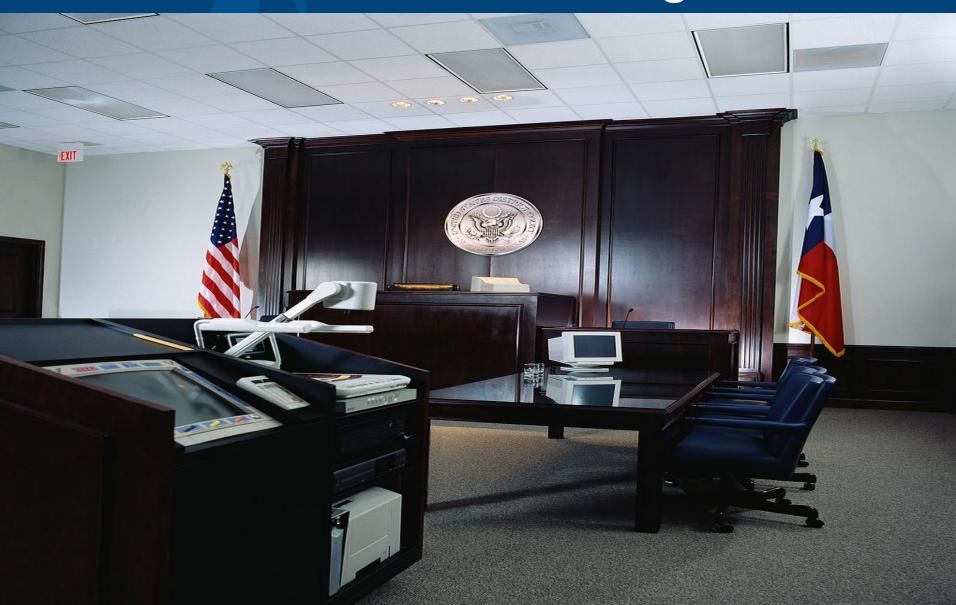
**Graduated Sanctions & Program Referral** 

# Graduated Sanctions for Age and Offense Eligible Youth

- May file complaint if:
  - No compliance with sanctions
  - Graduated Sanctions NOT Adopted
- Complaint <u>must</u> include:
  - Offense Report
  - Victim/Witness Statement
- Refer to STAR Program under §264.301, FC
- Refer to First Offender Program (if capacity is rebutted) §52.031, FC



# Court Proceedings



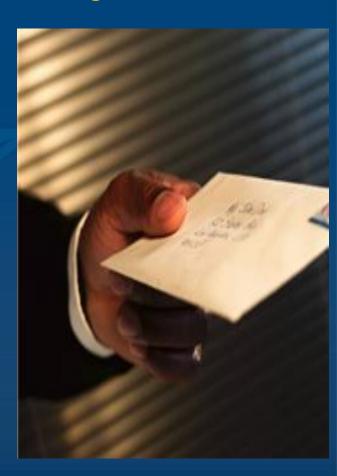
# **Court Proceedings**

Disposition & Modification Hearings

Amends 54.04(b) and 54.05(e)

Court must provide all written documents

- To defense and prosecutor
- On or before the second day before hearing





# **TJJD Commitments**

**Court Documentation** 

### Amends §243.005, HRC

Prior to placement at a TJJD state institution, the committing court must provide:

- Standard assessment tool results;
- CR-43J and the tracking incident number;
- DNA sample documentation

This provision contains language that conforms to similar requirements under Section 51.072, FC.







Technical Amendments & Cleanups

- Replaces references to "violent or habitual offender" in various statutes.
- Clarifies the offense applicability date for DSP transfers in 54.051(b) is September 1, 2011 or after.
- Changes code references from "child" to "person" after transfer to adult district court





Clerk of Court Records

Amends 54.051, FC

If DS Probation is transferred, the district clerk's public records consist of only:

- Petition
- Grand jury approval
- Judgment re: DS conduct
- Transfer Order
- Under Sec. 58.007(b) these records are exempted and become public only after transfer.



Transfer & Release Hearing

### Amends 54.11, FC

- Makes written reports and supporting documents admissible as evidence;
- Must be provided to defense attorney at least 5 days before hearing instead of one day prior.





# Certification



### **Certification Transfers**

**Technical Amendments & Cleanup** 

### Amends 54.02(k)

Parental notice is no longer required after a post-18 certification.

#### Amends 54.0411

Adds certification and transfer proceeding to the incomplete proceedings that remain under the juvenile court's jurisdiction.





## Certification and Transfer

Post-18 Certification

### Amends § 54.02(I), FC

- Eliminates diagnostic study, social history, offense investigation, and any other §54.02(d) requirements.
- Court <u>shall</u> order examination under §51.20(a).
   FC, if defense attorney requests at least 10 days before hearing.
- Results must be provided at least 5 days prior to hearing.



### Certification and Transfer

Clerk of Court Records

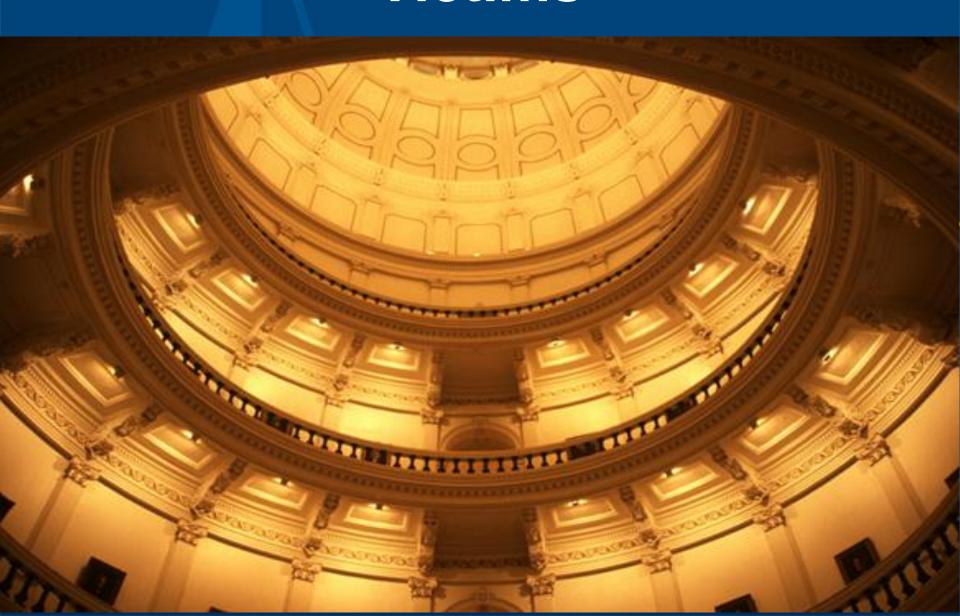
Amends §54.02(s), FC

Upon certification as an adult, the district clerk's public record includes:

- Petition for discretionary transfer;
- Order of transfer;
- Order of commitment (i.e. adult jail or juvenile detention facility)



# **Victims**



## Victim Restitution

**Notifications** 

### Amends 54.0482, FC

- Must notify victims that a restitution payment has been received by the JPD;
- Notice may be given in any method;
- Notification by certified mail only required if payment not claimed within 30 days



# Victim Rights Sexual Assault Victims

### Amends 57.002, FC

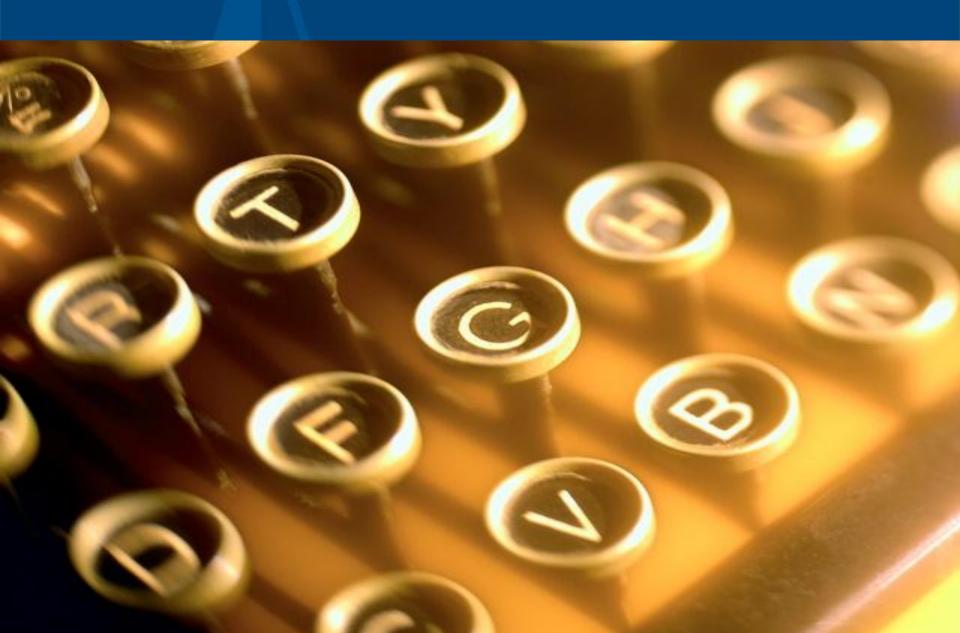
Victims of sexual assault entitled to additional rights --

- Info on evidence collected
- HIV/AIDS counseling and testing
- Forensic medical exam if offense reported within 96 hours
- Applies to sexual assault set out in specific provisions.





# Juvenile Records



# Sealing of Records

**TJJD Statistical Data** 

### Amends §58.003 (g-1), FC

- Confirms that TJJD's community-based institutional statistical data are exempt from sealing.
- Physical files and electronic records relating to youth committed to TJJD are not subject to this exemption.





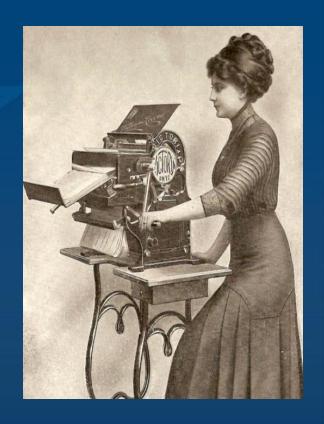
# Confidentiality & Disclosures

**Inspection & Copying** 

#### Amends §58.007(b), FC

- Makes records available for inspection or copying.
- Clarifies that a child's defense attorney may inspect and make copies of documents contained in the district attorney's case files.
- Provides uniformity to this practice statewide.

Effective May 24, 2013





Disclosures to Juvenile & Requests for Records

#### Amends §58.204(b)(3), FC

- DPS may release restricted JJIS information to the subject of the records;
- Requires permission by juvenile court order.

#### Amends §58.204(b)(4), FC

- DPS may release JJIS info by court order at the request of the person who is the subject of the records.





Party to a Civil Suit

#### Amends §58.204(b)(5), FC

- DPS may disclose JJIS history to a party in a civil suit;
- If the subject of the record has put facts relating to the person's records at issue in the suit.





Disclosures to Military

#### Amends §58.204(b)(3), FC [2nd of 2]

- Authorizes DPS to disclose restricted JJIS info to military personnel and recruiters.
- Applicant must provide DPS with written permission to release.
- Authority under 58.106, FC applies to unsealed, unrestricted records.

Effective June 14, 2013.





**Disclosures to Military** 

#### Amends §58.207(d), FC

- Authorizes juvenile probation departments and other agencies to disclose delinquency info to military personnel and recruiters.
- Authorized in the same manner as unsealed, unrestricted records under 58.005 or 58.007, FC.





## Access to Criminal History

#### **Disclosures to Military**

#### Adds §411.1410 (a), GC

- Authorizes armed forces agencies to obtain summary criminal history information (including juvenile delinquency history) from DPS;
- Must submit a signed release to DPS from the applicant for enlistment;
- Records must be destroyed after the purpose has been accomplished;
- Prohibits release except by court order or permission.

Effective June 14, 2013





# DPS Form CR-64

Request for Criminal History
Record on Applicants for
Enlistment in the Armed
Forces

Website
www.txdps.state.tx.us
Crime Records
General Information

Sec. 411.1410, GC

#### TEXAS DEPARTMENT OF PUBLIC SAFETY

CRIME RECORDS SERVICE ACCESS & DISSEMINATION BUREAU





#### REQUEST FOR CRIMINAL HISTORY RECORD INFORMATION ON APPLICANTS FOR ENLISTMENT IN THE ARMED FORCES

Per Government Code 411.1410, an agency of the United States armed forces, including a recruiter for the agency, is entitled to obtain from the Department of Public Safety criminal history record information that relates to a person who is an applicant for enlistment in the United States armed forces.

An agency of the United States armed forces is entitled to criminal history record information only if the agency submits a signed statement from the applicant that authorizes the agency to obtain the information.

Complete the required information below to request criminal history record information under the authority of Government Code 411.1410. If you have any questions, please contact 512-424-2474, option 1.

| Applicant's Information:    |         |         |       |  |
|-----------------------------|---------|---------|-------|--|
| Name (Last, First, Middle): |         |         |       |  |
| Other Names Used:           |         |         |       |  |
| Sex: Dat                    |         |         |       |  |
| Applicant's signature:      |         |         | Date: |  |
| Requestor's Information:    |         |         |       |  |
| Name:                       |         | Date: _ |       |  |
| Contact Number:             | Branch: |         |       |  |
| Mail Response To:           |         |         | _     |  |
|                             |         |         | _     |  |
|                             |         |         | _     |  |
|                             |         |         | _     |  |
|                             |         |         |       |  |

Mail this request letter and \$10.00 payable by check or U.S. money order to:

Texas Department of Public Safety Crime Records Service P.O. Box 149322 Austin. TX 78714-9322

Important Note: any matches supplied in response to this request are derived from a name-based search using only the identifiers submitted by the requestor. The Department of Public Safety in no way guarantees the information provided in response to this request is for the person named in the request. The requester must use cention in attributing name-based criminal history record information to a specific person.

**38-64** (6/6/13)

**Continuing Jurisdiction Issues** 

#### Amends 58.207(c), FC

- Suspends compliance with restricted access certification notices regarding eligible youth who have reached age 17 but who remain:
  - under the jurisdiction of the juvenile court;
     or
  - committed to a TJJD state institution.





#### Implementation Recommendations

#### § 58.207(c), FC

- To fulfill this requirement, consider:
  - a mechanism for possible issuance of a restricted access suspension order or other similar directive;
  - A method to track a child's discharge or last official action, if there was no adjudication;
  - ineligibility based on subsequent conduct; and
  - efficient, timely process for the signing and entry of the restricted access order at the time of discharge or release.





# Legislative Advisory Group

**Fingerprint Advisory Committee** 

- TJJD board must appoint a Fingerprint Advisory Committee under SB 1769.
   [Appointed at 8/29 TJJD Board Meeting]
  - Comprised of a cross-section of juvenile stakeholders; [1 Presiding Chair, 13 members]
  - Must develop a plan by December 1, 2014 to end the practice of fingerprinting low level misdemeanor offenses.
  - Responsibilities expire on January 1, 2015.





# 2013 Special Legislative Issue

STATE BAR SECTION REPORT VOL. 25, NO. 3 JUVENILE LAW AUGUST 2011 2011 Special Legislative Issue OFFICERS Chair: Nydia Thomas P.O. Box 13547 Austin, TX 78711 (512) 424-6683 Chair-Flect: 235 East Mitchell San Antonio, TX 78210 (210) 531-1965 Secretary: Laura Peterson 5502 Broadway Garland, TX 75043 (972) 303-4529 Richard Ainsa Treasurer: 6400 Delta Drive El Paso, TX 79905 Immediate Past-Chair: Chris Hubner P.O. Box 13547 Austin, TX 78711 (512) 424-6677 COUNCIL Terms Expire 2012 Terms Expire 2013 Terms Expire 2014 Kameron Johnson Austin Marisela Ledezma Edinburg Newsletter Editor: Judge Pat Garza Newsletter Secretary: Sunni Zuniga 386th District Court Website: www.juvemlelaw.org San Antonio, Texas, 78210 patearga386@sbcglobal net

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- State Bar Juvenile Law Section Report, Special Legislative Issue.
- TJJD Legal Education & Technical Assistance and guest contributors have prepared useful summaries and intent history of key juvenile justice bills enacted during the 83<sup>rd</sup> Legislative Session.
- Released in August, 2013, this issue includes an overview of TJJD Appropriations.



### Where to Get More Information

Juvenile Law Section, State Bar of Texas www.juvenilelaw.org

Texas Juvenile Justice Department www.tjjd.texas.gov

TJJD Legal Help Desk 512-490-7121 legalhelp@tjjd.texas.gov



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